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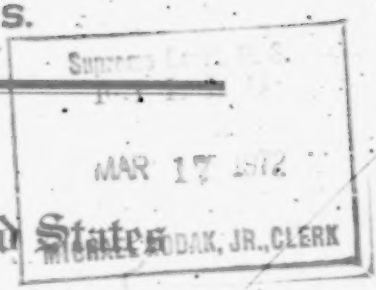

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. ~~71-783~~ 71-183

THE AGUA CALIENTE BAND OF MISSION INDIANS, by and through its TRIBAL COUNSEL, and DORA JOYCE PRIETO, PRISCILLA GONZALES, GLORIA GILLETTEE, PATRICK PATENCIO and LAWRENCE PIERCE, Allottees, Individually and in Class Action, on Behalf of ALL ALLOTTEES of Allotted Land on the AGUA CALIENTE BAND OF MISSION INDIANS RESERVATION, *Petitioners,*

v.

THE COUNTY OF RIVERSIDE, a Political Subdivision of the STATE OF CALIFORNIA, *Respondents.*

Petition for Rehearing of Denial of Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

LEWIS & ROCA
By JOHN P. FRANK
114 West Adams
Phoenix, Arizona 85003
RAYMOND C. SIMPSON
406 Security Bank Building
Long Beach, California 90802
Counsel for Petitioners

March 17, 1972

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This case involves the validity of a California possessory interest tax as applied to trust lands leased by Indian tribes or individual Indians. The Ninth Circuit Court of Appeals upheld the tax by a two-to-one vote

and this Court denied certiorari, Justices Douglas, Brennan, and Marshall dissenting on February 22, 1972. We now petition for rehearing on the denial of certiorari. The Court denied our petition after first inviting the Office of the Solicitor General to express the views of the United States, which were negative. In a recent case, *Mescalero Apache Tribe* v. *Jones*, No. 71-738, the Solicitor General has now supported a petition for certiorari in an Indian tax case. In *Mescalero* the issue was a tax on revenue and property utilized by the tribe in conjunction with its operation of land leased from the United States Government, being taxed by the State of New Mexico.

We appreciate that the two cases can be, if one is determined to do so, distinguished technically, but they cannot be distinguished functionally. The issue of importance in *Mescalero* as advanced by the Solicitor General is that, "the question of State authority in this area is of national importance because of the serious detrimental effect such taxes can have on the economic well being of Indian tribes and on major federal programs intended to encourage Indian economic development. The decision below, we submit, upholds an unauthorized extension of state jurisdiction to tax which would unwarrantably interfere with these federal programs, and review by this Court is therefore appropriate."

If we may make bold to say so, this is approximately 400 times more true in the *Agua Caliente* case than in the *Mescalero* case. *Mescalero* involves a tax on Indian operations of a money-making project on land leased from the Government. This is comparatively rare. In *Agua Caliente*, the issue was the effect of state taxes for the land under lease belonging either to the tribes or

the Indians themselves. Most, if not all, of the 400 or so tribes or their members in the United States have land in the same category as the *Agua Caliente's*. Our most recent statement represented more than 100 tribes.

CONCLUSION

We have no doubt that certiorari should be granted in the *Mescalero* case. At the same time we respectfully submit that the Order Denying the Petition for Certiorari in *Agua Caliente* should be vacated and that it should be set for briefing and argument too so that the Court may determine the permissible limits of state taxation on programs for Indian economic survival.

LEWIS & ROCA

By JOHN P. FRANK

RAYMOND C. SIMPSON

Counsel for Petitioners

March 17, 1972

Certificate of Counsel

As counsel for petitioners, I hearby certify that this petition for rehearing is presented in good faith and not for delay.

JOHN P. FRANK

Counsel for Petitioners

APPENDIX A

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D. C. 20515

March 14, 1972

JAMES A. HALEY
7TH DIST., FLORIDA

Washington Address:
ROOM 1236 LONGWORTH BUILDING

Home Address:
P.O. BOX 1053
SARASOTA, FLORIDA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
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FORT MYERS, FLORIDA
MRS. BURNETT BLOODWORTH

Mr. Ray Leonard Patencio, Chairman
Agua Caliente Band of Mission Indians
587 South Palm Canyon Drive
Palm Springs, California 92262

Dear Mr. Patencio:

As Chairman of the Indian Subcommittee for the House of Representatives, I was extremely distressed to learn that your petition for certiorari in the case of ACBMI vs. The County of Riverside was denied. This is indeed a devastating blow to the economic interest of Indians throughout our country, which will undoubtedly cause many to again say that "the white man speaks with a forked tongue".

The President of the United States without equivocation told our Congress that the economic plight of the American

Indian cannot any longer be ignored inasmuch as it is, "a problem of staggering magnitude." It is therefore extremely difficult for the Congress to understand why the Solicitor General saw fit to urge the Supreme Court to deny your petition for certiorari.

The Solicitor General contended that the law in the matter was settled nearly 30 years ago, and adds that if Congress wishes to change it at this time to conform with the position asserted by the Indians, that the problem is for Congress and not for the Courts. We in the Congress who are dealing with the Indian problems agree with the Solicitor General that the law has been settled for quite some time, but firmly believe that it sustains the contentions being made by the Indians.

Congress felt that the Indians already enjoyed this immunity and if we are wrong, we now want to know so that we can initiate appropriate legislation to advance the cause of the Indians. Without the Supreme Court granting the Indian the right to be heard, the Congress is rendered impotent because we do not know what additional legislation, if any, would be required.

If you should decide to file a petition for reconsideration, please let the Court know that I have been Chairman of the Indian Subcommittee for the House of Representatives since 1955 and that by reason thereof, I know this is a critical issue for all of the reservation Indians in the United States, and that I am therefore firm in my convictions that you are entitled to a declaration of your rights by the United States Supreme Court.

Sincerely yours,

/s/ JAMES A. HALEY
James A. Haley
Chairman
Subcommittee of Indian Affairs

CERTIORARI DENIED N.C.R.